

COPY

1 LAWRENCE A. MICHAELS (SBN 107260)  
2 VERONICA VON GRABOW (SBN 259859)  
3 MITCHELL SILBERBERG & KNUPP LLP  
4 11377 West Olympic Boulevard  
5 Los Angeles, California 90064-1683  
6 T: (310) 312-2000 — F: (310) 312-3100

7 LINDA MILLER SAVITT (SBN 094164)  
8 BALLARD, ROSENBERG, GOLPER & SAVITT LLP  
9 500 North Brand Boulevard, Twentieth Floor  
10 Glendale, California 91203-9946  
11 T: (818) 508-3700 — F: (818) 506-4827

12 CAROL A. HUMISTON (SBN 115592)  
13 SENIOR ASSISTANT CITY ATTORNEY – CITY OF BURBANK  
14 275 East Olive Avenue  
15 Burbank, California 91510  
16 T: (818) 238-5707 — F: (818) 238-5724

17 Attorneys for Defendant and Cross-Complainant CITY OF BURBANK, including the  
18 POLICE DEPARTMENT OF THE CITY OF BURBANK (erroneously sued as an  
19 independent entity named "BURBANK POLICE DEPARTMENT")

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
21 FOR THE COUNTY OF LOS ANGELES

22 OMAR RODRIGUEZ; CINDY GUILLEN-  
23 GOMEZ; STEVE KARAGIOSIAN; ELFEGO  
24 RODRIGUEZ; AND JAMAL CHILDS,

25 Plaintiffs,

26 v.

27 BURBANK POLICE DEPARTMENT; CITY  
28 OF BURBANK; AND DOES 1 THROUGH  
100, INCLUSIVE,

Defendants.

BURBANK POLICE DEPARTMENT; CITY  
OF BURBANK,

Cross-Complainants,

v.

OMAR RODRIGUEZ, an Individual;

Cross-Defendant.

CONFIRMED COPY  
ORIGINAL FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

AUG 25 2011

John A. Clarke, Executive Officer/Clerk  
BY *[Signature]* Deputy  
Glorietta Robinson

Case No. BC 414602

Date: August 31, 2011

Time: 9:00 a.m.

Location: Dept. 37

Judge: The Hon. Joanne O'Donnell

**DEFENDANT CITY OF BURBANK'S  
STATEMENT OF POSITION RE ORDER TO  
SHOW CAUSE RE TERMINATING  
SANCTIONS AGAINST PLAINTIFFS OMAR  
RODRIGUEZ, STEVE KARAGIOSIAN AND  
CINDY GUILLEN-GOMEZ FOR FAILURE  
TO PAY DISCOVERY REFEREE FEES;  
DECLARATION OF VERONICA VON  
GRABOW**

File Date: May 28, 2009

Trial Date: Aug. 31, 2011 (Plff. Guillen);  
Feb. 15, 2012 (Plff. Karagiosian);  
July 11, 2012 (Plff. O. Rodriguez)

Discovery Referee: Hon. Diane Wayne, Ret.

1 Defendant and Cross-Complainant City of Burbank<sup>1</sup> ("Burbank") respectfully submits its  
2 position regarding the Order To Show Cause Regarding Terminating Sanctions Against Plaintiffs  
3 Steve Karagiosian and Cindy Guillen-Gomez, and Cross-Defendant Omar Rodriguez (collectively,  
4 "Plaintiffs") For Failure to Pay Discovery Reference Costs (the "OSC"). For the reasons set forth  
5 below, the Court should (1) order terminating sanctions against Plaintiffs Karagiosian and Guillen  
6 and dismiss their complaint against Burbank and (2) strike Rodriguez's answer to Burbank's  
7 cross-complaint and direct the clerk to enter a default.

8  
9 **I. SUMMARY OF RELEVANT FACTS**

10 **A. Plaintiffs' Conduct Necessitated Appointment Of A Discovery Referee**

11 Since the inception of this action, Plaintiffs have engaged in a pattern of discovery abuses  
12 in a transparent effort to delay and thwart Burbank's discovery. Burbank recognized early on that  
13 discovery in this matter would be extensive and, given the conduct of Plaintiffs and their counsel,  
14 numerous discovery issues would arise. Accordingly, Burbank requested appointment of a  
15 discovery referee, which this Court granted on October 2, 2009. In granting Burbank's request,  
16 the Court noted,

17 [A]ppointment of a discovery referee is necessary to hear and  
18 determine all discovery disputes, based on the Michaels declaration,  
19 which recites the "exceptional circumstances" that require the  
reference (CCP §639(d)(2)), and which plaintiffs' counsel does not  
refute.

20 Declaration of Veronica von Grabow ("von Grabow Decl."), ¶ 2, Exhibit. A at p. 5 [October 2,  
21 2009 Order]. The Court also ordered that the discovery referee's fees would be apportioned pro  
22 rata among the parties. Exhibit A at pp. 5-6.

23 The necessity of that appointment has borne out. Over the succeeding approximately two-  
24 year period, Plaintiffs repeatedly have made frivolous motions (or threats to bring motions) for  
25 protective orders, repeatedly have cancelled depositions at the last minute, disobeyed the Court's  
26

27  
28 <sup>1</sup> Including the Police Department of the City of Burbank (erroneously sued as an  
independent entity named "Burbank Police Department").

1 order, and failed and refused to provide proper responses to written discovery.<sup>2</sup> Burbank has been  
2 forced to appear before the Discovery Referee for assistance and has had to incur thousands of  
3 dollars in attorneys' fees to compel Plaintiffs to comply with their basic obligations. Plaintiffs  
4 have repeatedly had monetary sanctions imposed against them, yet have failed to pay any of those  
5 sanctions. *Id.* at ¶ 3.

6  
7 **B. Plaintiffs' Willfully Obstruct Burbank's Discovery By Cutting Off Access To**  
8 **The Discovery Referee**

9 While continuing to stymie Burbank's legitimate efforts to obtain discovery, Plaintiffs now  
10 have engaged in the ultimate obstruction of discovery – cutting off Burbank's access to the court-  
11 appointed Discovery Referee by refusing to pay their JAMS bills.

12 On July 20, 2011, JAMS imposed an administrative stay on the case, which is to remain in  
13 effect until Plaintiffs' account is paid. According to the notice from JAMS and the account  
14 statements attached thereto, Plaintiffs owe \$14,245.22. They have not made a payment to JAMS  
15 in more than five months, even though the Discovery Referee had handled several discovery  
16 matters for the parties during that time. JAMS gave Plaintiffs until July 27, 2011 to bring their  
17 account current and they failed to do so. *Id.* at ¶ 4, Exhibit B.

18 Plaintiffs' refusal to pay JAMS has prevented Burbank from obtaining relief from the  
19 Discovery Referee on a number of outstanding matters. By way of example, since December  
20 2010, Burbank has been trying to get the three Plaintiffs to provide proper answers to Special  
21 Interrogatories Nos. 10 and 11 (the "Interrogatories"), which seek information about how  
22 Plaintiffs obtained confidential personnel documents produced by them. Despite *two separate*  
23 *orders* directing Plaintiffs to provide substantive, verified responses to the Interrogatories, and  
24 being sanctioned for disobeying one of those orders, on July 19, 2011, Plaintiffs Guillen and  
25

26 <sup>2</sup> Plaintiffs' conduct was detailed in the Motion for Orders and papers in support thereof  
27 which was lodged with the Court in connection with Burbank's August 15, 2011 *ex parte*  
28 application to shorten time on the hearing of that motion. Immediately after that *ex parte* hearing,  
counsel for Karagiosian and Guillen, and counsel for Rodriguez were provided with full and  
complete copies of the Motion for Orders and supporting papers. von Grabow Decl. ¶ 3.

1 Karagiosian served further responses stating they "lack personal knowledge" to answer the  
2 Interrogatories. Such a response is patently improper. Burbank has not yet received further  
3 responses from Rodriguez.<sup>3</sup> By not paying their JAMS bill, Plaintiffs have precluded Burbank  
4 from seeking assistance from the Discovery Referee to compel Plaintiffs to provide this critical  
5 discovery. Such prejudice to Burbank is inexcusable and manifestly unjust.

6 In another example, Burbank cannot obtain rulings on a pending matter before the  
7 Discovery Referee related to Rodriguez's refusal to appear for his deposition, which was duly  
8 noticed for June 20, 2011. *Id.* ¶ 7. Rodriguez's deposition is critical to Burbank's cross-complaint  
9 against Rodriguez for conversion because Rodriguez has provided inconsistent and shifting  
10 responses related to the central issue in that case – when and how Rodriguez stole confidential  
11 personnel documents from the Burbank Police Department, and what use he made of those  
12 documents. Plaintiffs should not be rewarded for their misconduct by being permitted to evade  
13 Burbank's legitimate efforts to obtain discovery.

14 During the August 15, 2011 hearing on Burbank's *ex parte* application, Plaintiffs' counsel  
15 stated that they were *deliberately not paying* Plaintiffs' JAMS bill because of the expense. *Id.* at ¶  
16 8. It was not an oversight or an error. This Court found that Plaintiffs' refusal to pay was  
17 "egregious" and ordered the instant OSC regarding terminating sanctions against Plaintiffs. *Id.*  
18 Even now, with terminating sanctions looming, Plaintiffs and their counsel still have not brought  
19 their JAMS account current.<sup>4</sup>

20  
21 **II. THE COURT SHOULD ORDER TERMINATING SANCTIONS AGAINST**  
22 **PLAINTIFFS, DISMISSING THE COMPLAINT AGAINST BURBANK AND**  
23 **ENTERING DEFAULT ON THE CROSS-COMPLAINT**

24 California courts are well-armed against the type of misconduct exhibited by Plaintiffs in  
25 this action. In addition to being empowered to dismiss a complaint as terminating sanctions for  
26

27 <sup>3</sup> See von Grabow Decl. ¶¶ 5-6, Exhibits C [April 21, 2011 Order] and D [Amended 12th  
Report of the Discovery Referee].

28 <sup>4</sup> Defense counsel confirmed with JAMS that as of the filing of this Position Statement  
Plaintiffs had not paid their JAMS bill. *Id.* at ¶ 9.

1 misuse of the discovery process, *see* Cal. Code Civ. Proc. § 2023.30(d), “the statutes recognize  
2 that the courts have the inherent authority to dismiss an action.” *Del Junco v. Hufnagel*, 150 Cal.  
3 App. 4th 789, 799 (2007) (*citing* Code Civ. Proc., §§ 581, subd. (m) and 583.150; *Lyons v.*  
4 *Wickhorst* 42 Cal. 3d 911, 915 (1986); *Progressive Concrete, Inc. v. Parker*, 136 Cal. App. 4th  
5 540, 551 (2006)). The Court’s powers are “presumed correct and will not be disturbed in the  
6 absence of an abuse of discretion.” *Hartbrodt v. Burke*, 42 Cal. App. 4th 168, 175 (1996).

7 As discussed above, Plaintiffs’ deliberate refusal to pay the discovery reference costs is  
8 only the latest in a long line of discovery abuses. Indeed, it is the ultimate obstruction of the  
9 discovery process because by virtue of not paying the court-ordered Discovery Referee fees,  
10 Plaintiffs have stymied Burbank’s ability to enforce basic discovery obligations and obtain any  
11 relief. As such, there are more than sufficient grounds for awarding terminating sanctions. *See,*  
12 *e.g., Laguna Auto Body v. Farmers Ins. Exch.*, 231 Cal. App. 3d 481, 489 (1991) (affirming  
13 dismissal of action where the plaintiff failed to respond to written discovery, produce documents,  
14 comply with an order requiring the plaintiff to adhere to its discovery obligations, or oppose the  
15 defendant’s motion to compel and dismiss), *disapproved on other grounds by Garcia v.*  
16 *McCutchen*, 16 Cal. 4th 469 (1997).<sup>5</sup>

17 Here, the Court already has ordered Plaintiffs to comply with their discovery obligations –  
18 orders which have had no effect on their conduct in this litigation. Instead, Plaintiffs stand  
19 steadfast in their continued defiance of their discovery obligations, this Court’s orders and the  
20 Discovery Referee’s orders. Therefore, where “repeated warnings would [be] futile,” dismissal of  
21 the action is proper. *Laguna, supra*, 231 Cal. App. 3d at 489; *Del Junco v. Hufnagel*, 150 Cal.  
22 App. 4th 789, 800 (2007) (though the dismissed party “could have been held in contempt for  
23

24 <sup>5</sup> *See also, e.g., Collisson & Kaplan v. Hartunian*, 21 Cal. App. 4th 1611 (1994) (upholding  
25 the trial court’s order to strike the defendants’ answer because of the defendants’ failure to  
26 properly respond to discovery requests); *Hartbrodt, supra*, 42 Cal. App. 4th at 170 (where the  
27 plaintiff refused to comply with the Court’s order to produce recordings of communications  
28 between the plaintiff and the defendants, dismissal of the plaintiff’s complaint was appropriate as  
the plaintiff had an absolute obligation to provide the defendants with discovery relevant to the  
plaintiff’s claim); *Cornwall v. Santa Monica Dairy Co.*, 66 Cal. App. 3d 250, 253 (1977) (where  
plaintiff failed to respond to interrogatories, dismissal of action was proper: “[i]f a plaintiff wishes  
to avail himself of the California courts, he owes a duty to comply with its rules, such as the rules  
of discovery”).

1 violating court orders and the trial court could have issued other orders," the appellate court  
2 upheld the trial court's finding that such half-measures would have been futile given the history of  
3 misconduct).

4  
5 **III. CONCLUSION**

6 For the foregoing reasons, the Court should (1) order terminating sanctions against  
7 Plaintiffs Karagiosian and Guillen and dismiss their complaint against Burbank and (2) strike  
8 Rodriguez's answer to Burbank's cross-complaint and direct the clerk to enter a default.

9  
10 Dated: August 25, 2011

MITCHELL SILBERBERG & KNUPP LLP

Lawrence A. Michaels

Veronica von Grabow

11  
12 By: 

Veronica von Grabow

13 Attorneys for Defendants and Cross-Complainant  
14 CITY OF BURBANK, including the POLICE  
15 DEPARTMENT OF THE CITY OF BURBANK  
16 (erroneously sued as an independent entity named  
17 "BURBANK POLICE DEPARTMENT")  
18  
19  
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**DECLARATION OF VERONICA VON GRABOW**

I, VERONICA VON GRABOW, declare,

1. I am an attorney at law duly licensed to practice law in the State of California and before this Court. I am an associate attorney with the law firm of Mitchell Silberberg & Knupp LLP, attorneys of record for Defendant and Cross-Complainant City of Burbank, including the Police Department of the City of Burbank ("Burbank"). I have personal knowledge of the following facts and, if called and sworn as a witness, could and would competently testify thereto.

2. Burbank recognized early on that discovery in this matter would be extensive and, given the conduct of Plaintiffs and their counsel, numerous discovery issues would arise. Accordingly, Burbank requested appointment of a discovery referee, which this Court granted on October 2, 2009. Attached hereto as **Exhibit A** is a true and correct copy of this Court's October 2, 2009 Order.

3. Over the following nearly two-year period, Plaintiffs repeatedly have made frivolous motions (or threats to bring motions) for protective orders, repeatedly have cancelled depositions at the last minute, disobeyed the Court's order, and failed and refused to provide proper responses to written discovery. Burbank has been forced to appear before the Discovery Referee for assistance and has had to incur thousands of dollars in attorneys' fees to compel Plaintiffs to comply with their basic obligations. Plaintiffs have repeatedly had monetary sanctions imposed against them, yet have failed to pay any of those sanctions. Plaintiffs' conduct was detailed in the Motion for Orders and papers in support thereof which was lodged with this Court in connection with Burbank's August 15, 2011 *ex parte* application to shorten time on the hearing of that motion. Immediately after that *ex parte* hearing, I provided counsel for Karagiosian and Guillen, and counsel for Rodriguez full and complete copies of the Motion for Orders and supporting papers.

4. On July 20, 2011, JAMS imposed an administrative stay on the above-captioned action, which is to remain in effect until Plaintiffs Omar Rodriguez, Steve Karagiosian

1 and Cindy Guillen-Gomez (collectively "Plaintiffs") bring their account current. Attached hereto  
2 as **Exhibit B** is a true and correct copy of the July 20, 2011 letter from JAMS with the attachments  
3 thereto.

4           5. Plaintiffs' refusal to pay JAMS has prevented Burbank from seeking relief  
5 from the Discovery Referee. For example, since December 2010, Burbank has been trying to get  
6 the three Plaintiffs to provide proper answers to Special Interrogatories Nos. 10 and 11 (the  
7 "Interrogatories"), which seek information about how Plaintiffs obtained confidential personnel  
8 documents produced by them. Attached hereto as **Exhibit C** is a true and correct copy of this  
9 Court's April 21, 2011 Order granting Burbank's first motion to compel further responses to the  
10 Interrogatories. Attached hereto as **Exhibit D** is a true and correct copy of the Amended 12th  
11 Report of the Discovery Referee recommending this Court grant Burbank's second motion to  
12 compel further responses to the Interrogatories and impose sanctions against Plaintiffs for  
13 disobeying the April 21, 2011 Order.

14           6. On July 19, 2011, Plaintiffs Guillen and Karagiosian served further  
15 responses to Burbank's Special Interrogatories Nos. 10 and 11, pursuant to the Amended 12th  
16 Report of the Discovery Referee. In those responses, Guillen and Karagiosian each claim that  
17 they "lack personal knowledge" to answer the interrogatories. Burbank has not yet received  
18 further responses from Rodriguez. Burbank is unable to seek assistance to from the Discovery  
19 Referee on this matter because Plaintiffs have not paid their JAMS bill.

20           7. Plaintiffs refusal to pay their JAMS bill has also prevented Burbank from  
21 obtaining rulings on a pending matter before the Discovery Referee related to Rodriguez's refusal  
22 to appear for his deposition, which was duly noticed for June 20, 2011.

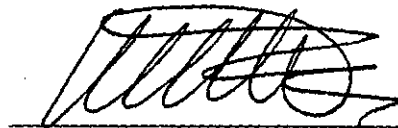
23           8. I appeared on behalf of Burbank at the August 15, 2011 hearing on  
24 Burbank's *ex parte* application to shorten time for hearing on its Motion for Orders. During that  
25 *ex parte* hearing, Plaintiffs' counsel, Robert C. Hayden, stated that Plaintiffs were not paying their  
26 JAMS bill because of the expense. This Court found Plaintiffs' refusal to pay was "egregious"  
27 and ordered the instant OSC regarding terminating sanctions against Plaintiffs.



1                   9.     On August 24, 2011, I spoke via telephone with the JAMS Account  
2 Manager for this action, Jason Feazell. During that call, Mr. Feazell informed me that Plaintiffs'  
3 still had not paid their JAMS account.  
4

5                   Executed August 25, 2011, at Los Angeles, California.  
6

7                   I declare under penalty of perjury under the laws of the State of California that the  
8 foregoing is true and correct.  
9



Veronica von Grabow

EXHIBIT "A"

EXHIBIT "A"

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 10/02/09

DEPT. 37

HONORABLE JOANNE O'DONNELL

JUDGE

H. A. SMITH

DEPUTY CLERK

HONORABLE  
6.

JUDGE PRO TEM

ELECTRONIC RECORDING MOI

N. AVALOS, C.A.

Deputy Sheriff

C. KWON-CHANG

Reporter

9:00 am

BC414602

Plaintiff

Solomon E. Gresen ✓

Counsel

RHEUBAN & GRESSEN

OMAR RODRIGUEZ ET AL

VS

Defendant

Lawrence A. Michaels ✓

BURBANK POLICE DEPARTMENT ET AL

Counsel

MITCHELL SILBERBERG ET AL

170.6 DAVID P. YAFFE

Linda Miller Savitt ✓

R/F 7-27-09 Denied as to BC4179

BALLARD ROSENBERG ET AL

## NATURE OF PROCEEDINGS:

DEMURRER OF DEFENDANTS KERRY SCHILF ET AL TO COMPLAINT;

MOTION OF DEFENDANTS BURBANK POLICE DEPARTMENT AND CITY OF BURBANK FOR AN ORDER: (1) COMPELLING DEPOSITION TESTIMONY OF PLAINTIFFS ELFEGO RODRIGUEZ AND OMAR RODRIGUEZ; (2) APPOINTING A DISCOVERY REFEREE TO HEAR OTHER ISSUES REGARDING DEPOSITIONS IN THIS ACTION; AND (3) GRANTING REQUEST FOR MONETARY SANCTIONS IN THE AMOUNT OF \$4,260 AGAINST PLAINTIFFS AND THEIR ATTORNEYS OF RECORD;

The demurrer was previously taken off calendar pursuant to request of the moving party.

Matter is called for hearing. Counsel have reviewed the court's written tentative ruling and advise the court that they have met and conferred regarding the appointment of a discovery referee. Counsel have agreed on Retired Judge Diane Wayne as the referee as well as alternates in the event Judge Wayne is unavailable.

The court hears argument of counsel. The tentative ruling issues as the order of the court:

The court takes judicial notice of plaintiffs' motion for protective order, including its attachments, but not of the truth of the matters stated therein.

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 10/02/09

DEPT. 37

HONORABLE JOANNE O'DONNELL

JUDGE

H. A. SMITH

DEPUTY CLERK

HONORABLE  
6.

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

N. AVALOS, C.A.

Deputy Sheriff

C. KWON-CHANG

Reporter

9:00 am BC414602

Plaintiff  
Counsel

Solomon E. Gresen ✓  
RHEUBAN & GRESSEN

OMAR RODRIGUEZ ET AL

VS

Defendant  
Counsel

Lawrence A. Michaels ✓  
MITCHELL SILBERBERG ET AL

BURBANK POLICE DEPARTMENT ET AL

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## NATURE OF PROCEEDINGS:

The motion to compel the continued deposition of plaintiff Elfego Rodriguez is granted. Counsel are ordered to meet and confer in the jury room before leaving Dept. 37 today to agree on the date, time and place of the continued deposition. The motion to compel plaintiff Omar Rodriguez to answer certain deposition questions is denied. The motion for appointment of a discovery referee is granted. The parties are to share the cost of the referee equally. CCP §639(d)(6)(A). Counsel are ordered to meet and confer in the jury room before leaving Dept. 37 today to reach agreement, if possible, on a discovery referee. If the parties are unable to agree, each party is ordered to submit to the court before leaving Dept. 37 a list of up to three nominees for appointment as referee. CCP §640. No sanctions.

Elfego Rodriguez deposition. A protective order "may include, but is not limited to, one or more of the following directions: . . . (12) that designated persons, other than the parties to the action and their officers and counsel, be excluded from attending the deposition." CCP § 2025.420. The court is not inclined to exclude defendants' representatives from the depositions at this time. Lowy Development Corporation v. Superior Court (1987) 190 Cal.App.3d 317, where limitations were imposed to prevent possible collusion, does not apply here because plaintiffs' counsel indicated

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Reporter

9:00 am

BC414602

Plaintiff

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R/F 7-27-09 Denied as to BC4179

BALLARD ROSENBERG ET AL

## NATURE OF PROCEEDINGS:

that he did not wish to prevent the representatives from observing the testimony by stating that they could watch plaintiffs' testimony on videotape. Plaintiffs' claims of collusion and intimidation of witnesses are speculative in any event. If the police officers were still parties to the action, they would be permitted to attend plaintiffs' depositions, regardless of whether plaintiffs might feel intimidated by their presence. To the extent that the police officers are attending the depositions in the capacity of a representative of the defendant Department, plaintiffs fail to demonstrate sufficient grounds for excluding them. Finally, plaintiffs' desire to prevent certain representatives from attending the depositions is impractical. It is not likely that the City and/or Department can always predict that a particular representative will always be available to attend every deposition. In addition, despite plaintiffs' assertions that several persons who have attended the depositions had no reason to be there, defendants demonstrate that those persons (Ms. Rosoff and Ms. Arutyunyan) are a litigation assistant and paralegal, respectively, who are assisting defense counsel with the litigation of this matter.

Plaintiffs' request that the court delay its decision on this issue until their motion for protective order is heard on October 29, 2009 is denied. Plaintiff Elfego Rodriguez walked out of his deposition on August 10, 2009. Plaintiffs did

10/2/09

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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## NATURE OF PROCEEDINGS:

not file the motion for protective order until September 21, 2009. Defendants filed their motion to compel his attendance at deposition on August 20, 2009 and are entitled to have a ruling on it without delay.

Omar Rodriguez deposition questions. Defendants seek testimony responsive to the following question: "Who did you give these documents to that I've marked as OR0401 through -5857" Plaintiffs' counsel's objection on the grounds that the question sought information violative of the attorney-client privilege is well-taken. The attorney-client privilege covers all forms of communication, including the transmission of specific documents. Mitchell v. Superior Court (1984) 37 Cal.3d 591, 600; Wellpoint Health Networks v. Superior Court (1997) 59 Cal.App.4th 110, 119. To the extent that plaintiff provided any or all of the documents to his attorney, such information is entitled to the attorney-client privilege. The fact of transmission triggers the privilege. Defendants argument that the transmission of the documents is not protected by the attorney-client privilege because the transmission does not provide any insight into case strategy is not persuasive. Even though the documents at issue were produced to defendants in response to defendants' discovery requests, it cannot be reasonably disputed that responding to the question would tend to reveal the significance that plaintiff and/or his counsel ascribe to the

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## NATURE OF PROCEEDINGS:

documents. The documents would not have been given to counsel (if they were) unless they had some significance to plaintiff's case. Thus, plaintiff's testimony regarding the fact of the transmission would tend to reveal the transmitter's intended strategy.

Discovery referee. A referee may be appointed on motion of any party or on the court's own motion where necessary "to hear and determine any and all discovery motions and disputes relevant to discovery in the action and to report findings and make a recommendation thereon." (CCP §639(a).)

Appointment of a discovery referee is authorized only where "necessary" to hear and determine such motions or disputes. CCP §638(a)(5); Weil & Brown, Cal. Prac. Guide: Civ. Proc. Before Trial (The Rutter Group 2006) ¶8:1804-8:1804.1. The court finds that appointment of a discovery referee is necessary to hear and determine all discovery disputes, based on the Michaels declaration, which recites the "exceptional circumstances" that require the reference (CCP §639(d)(2)), and which plaintiffs' counsel does not refute. Appointment of a referee is justified where antagonism between the parties and/or counsel might otherwise prolong the proceedings and frustrate discovery. Weil & Brown, supra, ¶8:1804.5. Where no party has established an inability to pay a pro rata share of the referee's fees, the court may order the fees to be split on a pro rata basis. Id. at ¶8:1804.20. Plaintiffs make

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C. KWON-CHANG

Reporter

9:00 am

BC414602

Plaintiff

Solomon E. Gresen ✓

Counsel

RHEUBAN & GRESEN

OMAR RODRIGUEZ ET AL

VS

Defendant

Lawrence A. Michaels ✓

BURBANK POLICE DEPARTMENT ET AL

Counsel

MITCHELL SILBERBERG ET AL

170.6 DAVID P. YAFFE

Linda Miller Savitt ✓

R/F 7-27-09 Denied as to BC4179

BALLARD ROSENBERG ET AL

## NATURE OF PROCEEDINGS:

no showing that the cost of a discovery referee would be prohibitive or that they cannot not afford a pro rata share of the expenses.

Sanctions. Because both parties presented colorable arguments for their positions, imposition of sanctions against plaintiffs would be unjust. CCP §§ 2025.450(c)(1), 2025.480(f).

Plaintiff's motion for protective order, presently set for October 29, 2009, is advanced to this date and placed off calendar.

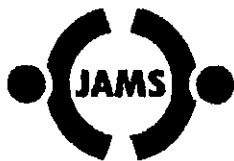
Counsel for plaintiff to give notice.

10/02/09



EXHIBIT "B"

EXHIBIT "B"



THE RESOLUTION EXPERTS®

July 20, 2011

Re: Rodriguez, Omar, et al. vs. Burbank Police Department, et al.  
JAMS Ref. No: 1220040470

Dear Mr. Gresen, Esq.,

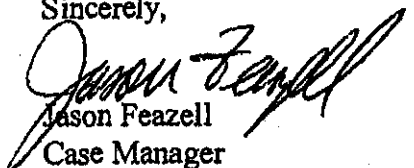
I am contacting you regarding the outstanding balance in the Omar Rodriguez et al. vs. Burbank Police Department et al., BC 414602, court reference matter at JAMS before Hon. Diane Wayne (Ret). On October 2, 2009, in Department 37, the Honorable Judge Joanne B. O'Donnell, Judge of the Superior Court, appointed Diane Wayne, Judge (Ret.), as the Discovery Referee. According to the Stipulation re Appointment of Discovery Referee of October 2009, the Court Ordered fees of the Referee be split by the parties on a pro rata basis.

Since Judge O'Donnell's appointment, the Referee has reviewed multiple documents and pleadings, conducted numerous conference calls, presided over multiple motions and depositions, and prepared twelve (12) Report & Recommendations for the Court. The Referee's fees were billed equally to counsel, however, since March 2011 JAMS has not received payment from Plaintiff for the Referee's work. Since Plaintiff's last payment of \$300 made on March 3, 2011, the Referee has heard multiple motions, presided over multiple days of deposition including April 28, 2011 at your firm, and completed Report and Recommendations 7 through 12 for the Court.

We would like to avoid going to the Superior Court seeking Hon. Joanne B. O'Donnell's assistance in receiving payment for the referee's fees. I have attached copies of the outstanding invoices. Please remit your payment to JAMS by July 27, 2011.

At this point, this matter is placed on Administrative Suspension until all balances are paid. Please contact me directly with any questions you may have.

Sincerely,

  
Jason Feazell  
Case Manager  
Tel: 213-253-9752  
Fax: 213-620-0100  
email: jfeazell@jamsadr.com

**PROOF OF SERVICE BY EMAIL & U.S. MAIL**

Re: Rodriguez, Omar, et al. vs. Burbank Police Department, et al.  
Reference No. 1220040470

I, Lulu Santos, not a party to the within action, hereby declare that on July 20, 2011 I served the attached LETTER TO MR. GRESSEN AND NOTICE OF STAY on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at Los Angeles, CALIFORNIA, addressed as follows:

Solomon Gresen Esq.

Rheuban & Gresen

15910 Ventura Blvd.

Suite 1610

Encino, CA 91436

Phone: 818-815-2727

seg@rglawyers.com

Parties Represented:

Jamal Childs

Elfego Rodriguez

Steve Karagiosian

Cindy Guillen-Gomez

Omar Rodriguez

Lawrence Michaels Esq.

Mitchell, Silberberg & Knupp, LLP

11377 W. Olympic Blvd.

Los Angeles, CA 90064-1683

Phone: 310-312-2000

LAM@MSK.com

Parties Represented:

City of Burbank

Linda Savitt Esq.

Ballard Rosenberg Golper & Savitt LLP

500 North Brand Blvd.

20th Floor

Glendale, CA 91203-9946

Phone: 818-508-3700

lsavitt@brgslaw.com

Parties Represented:

City of Burbank

Steven Rheuban Esq.

Rheuban & Gresen

15910 Ventura Blvd.

Suite 1610

Encino, CA 91436

Phone: 818-815-2727

svr@rglawyers.com

Parties Represented:

Jamal Childs

Elfego Rodriguez

Steve Karagiosian

Cindy Guillen-Gomez

Omar Rodriguez

Ms. Carol Humiston  
Office of the City Attorney - Burbank  
275 E. Olive Avenue  
Burbank, CA 91510  
Phone: 818-238-5707  
chumiston@ci.burbank.ca.us  
Parties Represented:  
City of Burbank

Ms. Linda Rosoff  
Burbank City Attorney's Office  
275 E Olive Ave  
Burbank, CA 91502  
Phone: 818-238-5702  
lrosoff@ci.burbank.ca.us  
Parties Represented:  
City of Burbank

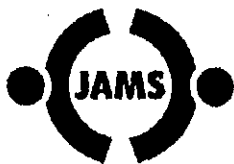
I declare under penalty of perjury the foregoing to be true and correct. Executed at Los Angeles,

CALIFORNIA on July 20, 2011.



---

Lulu Santos  
lsantos@jamsadr.com



THE RESOLUTION EXPERTS®

## STATEMENT OF ACCOUNT

**Statement Date**  
07/20/2011

TO: Solomon E. Gresen, Esq.  
Rheuban & Gresen  
15910 Ventura Blvd.  
Suite 1610  
Encino, CA 91436

Reference #: 1220040470 JF  
Billing Specialist: Tiffany Williamson  
Telephone: 949-224-4606  
Employer ID: 68-0542699

RE: Rodriguez, Omar, et al. vs. Burbank Police Department, et al.

Representing: Omar Rodriguez  
Cindy Guillen-Gomez  
Steve Karagiosian  
Elfego Rodriguez  
Jamal Childs

Neutrals(s): Hon. Diane Wayne (Ret.)

Hearing Type: Court Reference

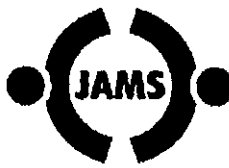
REP# 1

Date	Description	Charges	Credits	Balance
10/09/2009	INVOICE #0001840245-220 *	3,700.00		3,700.00
10/30/2009	INVOICE #0001861031-220	1,357.22		5,057.22
11/05/2009	CK #9877 Paid By: Rheuban & Gresen		2,050.00	3,007.22
11/30/2009	INVOICE #0001883419-220	304.81		3,312.03
12/10/2009	CK #9750 Paid By: Rheuban & Gresen		3,007.22	304.81
12/30/2009	INVOICE #0001905027-220	754.26		1,059.07
01/19/2010	CK #9760 Paid By: Rheuban & Gresen		304.81	754.26
01/20/2010	CK #9852 Paid By: Rheuban & Gresen		1,059.07	(304.81)
01/25/2010	INVOICE #0001918469-220	600.00		295.19
02/01/2010	CREDIT MEMO # #0001929554		600.00	(304.81)
02/02/2010	INVOICE #0001929823-220	10,418.75		10,113.94
02/04/2010	CREDIT MEMO # #0001931320		3,000.00	7,113.94
02/04/2010	INVOICE #0001931321-220	3,000.00		10,113.94
02/26/2010	CREDIT MEMO # #0001949608		450.00	9,663.94
02/26/2010	INVOICE #0001949609-220	2,683.26		12,347.20
03/02/2010	INVOICE #0001951537-220	3,300.00		15,647.20

YOUR ACCOUNT BALANCE IS DUE UPON RECEIPT

Please make checks payable to JAMS, Inc. and mail to:

P.O. BOX 512850  
Los Angeles, CA 90051-0850



THE RESOLUTION EXPERTS®

RE: Rodriguez, Omar, et al. vs. Burbank Police Department, et al.

Representing: Omar Rodriguez  
Cindy Guillen-Gomez  
Steve Karagiosian  
Elfego Rodriguez  
Jamal Childs

Neutrals(s): Hon. Diane Wayne (Ret.)

Hearing Type: Court Reference

Reference #: 1220040470

REP# 1

Date	Description	Charges	Credits	Balance
03/02/2010	CK #9928 Paid By: Rheuban & Gresen		295.19	15,352.01
03/03/2010	INVOICE #0001952151-220	330.00		15,682.01
03/26/2010	CK #9982 Paid By: Rheuban & Gresen		10,113.94	5,568.07
03/31/2010	INVOICE #0001974365-220	660.00		6,228.07
04/01/2010	CK #10008 Paid By: Rheuban & Gresen		2,683.26	3,544.81
04/05/2010	CK #10023 Paid By: Rheuban & Gresen		3,300.00	244.81
04/08/2010	CK #10035 Paid By: Rheuban & Gresen		330.00	(85.19)
04/30/2010	INVOICE #0001997755-220	663.46		578.27
05/03/2010	CK #10091 Paid By: Rheuban & Gresen		660.00	(81.73)
05/05/2010	INVOICE #0002001281-220	2,200.00		2,118.27
05/26/2010	INVOICE #0002014827-220	6,600.00		8,718.27
05/27/2010	CREDIT MEMO # #0002015090		3,000.00	5,718.27
05/28/2010	INVOICE #0002018741-220	3,030.00		8,748.27
06/17/2010	CK #11102 Paid By: Rheuban & Gresen		578.27	8,170.00
06/30/2010	INVOICE #0002046921-220	960.00		9,130.00
07/29/2010	INVOICE #0002063531-220	660.00		9,790.00
07/29/2010	INVOICE #0002063535-220	3,300.00		13,090.00
08/05/2010	CK #11206 Paid By: Rheuban & Gresen		8,170.00	4,920.00
08/18/2010	CK #11268 Paid By: Rheuban & Gresen		960.00	3,960.00
08/23/2010	INVOICE #0002083012-220	3,300.00		7,260.00



THE RESOLUTION EXPERTS®

RE: Rodriguez, Omar, et al. vs. Burbank Police Department, et al.

Representing: Omar Rodriguez  
Cindy Guillen-Gomez  
Steve Karagiosian  
Elfego Rodriguez  
Jamal Childs

Neutrals(s):

Hon. Diane Wayne (Ret.)

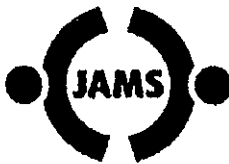
Hearing Type: Court Reference

Reference #: 1220040470

REP# 1

Date	Description	Charges	Credits	Balance
09/16/2010	CK #11357		7,260.00	0.00
	Paid By: Rheuban & Gresen			
09/30/2010	INVOICE #0002117742-220	907.50		907.50
11/02/2010	CK #11435		907.50	0.00
	Paid By: Rheuban & Gresen			
11/30/2010	INVOICE #0002167008-220	3,465.81		3,465.81
12/08/2010	INVOICE #0002172790-220	6,600.00		10,065.81
01/20/2011	CK #11601		3,465.91	6,599.90
	Paid By: Rheuban & Gresen			
01/25/2011	INVOICE #0002204766-220 *	2,314.10		8,914.00
02/14/2011	CK #11684		6,600.00	2,314.00
	Paid By: Rheuban & Gresen			
02/15/2011	CREDIT MEMO # #0002224985		300.00	2,014.00
02/15/2011	INVOICE #0002224986-220	300.00		2,314.00
02/25/2011	CK #11708		2,314.10	(0.10)
	Paid By: Rheuban & Gresen			
03/03/2011	CK #11723		300.00	(300.10)
	Paid By: Rheuban & Gresen			
03/31/2011	INVOICE #0002266190-220	8,091.86		7,791.76
04/29/2011	INVOICE #0002294486-220	5,036.52		12,828.28
05/31/2011	INVOICE #0002318636-220	168.03		12,996.31
06/30/2011	INVOICE #0002345642-220	1,248.91		14,245.22

Outstanding Balance: 14,245.22



THE RESOLUTION EXPERTS®

## CREDIT MEMO

Invoice Date  
02/15/2011

Invoice Number  
0002224985-220

To: Solomon E. Gresen, Esq.  
Rheuban & Gresen  
15910 Ventura Blvd.  
Suite 1610  
Encino, CA 91436

Reference #: 1220040470 JF  
Billing Specialist: Tiffany Williamson  
Telephone: (949) 224-4606  
Employer ID: 68-0542699

RE: Rodriguez, Omar, et al. vs. Burbank Police Department, et al.

Representing: Omar Rodriguez & Cindy Guillen-Gomez  
& Steve Karagiosian & Elfego Rodriguez  
& Jamal Childs

Neutral(s): Hon. Diane Wayne (Ret.)

Hearing Type: Court Reference

Rep# 1

Date/ Time	Description	Hours	Total Billed	Your Share
03/01/2011 9:00 am	Hon. Diane Wayne (Ret.) Hearing Time(CANCELED)	1.00	0.00	(300.00)

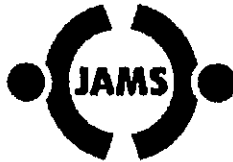
Fees (300.00)

Total \$ (300.00)

Outstanding Balance as of 7/20/2011 \$ 14,245.22

THIS CREDIT HAS BEEN APPLIED TO YOUR ACCOUNT.





THE RESOLUTION EXPERTS®

# INVOICE

Invoice Date  
02/15/2011

Invoice Number  
0002224986-220

To: Solomon E. Gresen, Esq.  
Rheuban & Gresen  
15910 Ventura Blvd.  
Suite 1610  
Encino, CA 91436

Reference #: 1220040470 JF  
Billing Specialist: Tiffany Williamson  
Telephone: (949) 224-4606  
Employer ID: 68-0542699

RE: Rodriguez, Omar, et al. vs. Burbank Police Department, et al.

Representing: Omar Rodriguez & Cindy Guillen-Gomez  
& Steve Karaglosian & Elfege Rodriguez  
& Jamal Childs

Neutral(s): Hon. Diane Wayne (Ret.)

Hearing Type: Court Reference

Rep# 1

Date/ Time	Description	Hours	Total Billed	Parties Billed	Your Share
03/11/2011 9:30 am	Hon. Diane Wayne (Ret.) Hearing Time	1.00	600.00	2	300.00

Fees 300.00

Total \$ 300.00

Outstanding Balance as of 7/20/2011 \$ 14,245.22

Payment due upon receipt. Please make checks payable to JAMS, Inc. and mail to:

P.O. Box 512850

Los Angeles, CA 90051-0850

Invoice total is based on the fee split agreed upon by all parties.

If the case cancels or continues, fees are due per our cancellation and continuance policy.



# INVOICE

**Invoice Date**  
03/31/2011

**Invoice Number**  
0002266190-220

**To:** Solomon E. Gresen, Esq.  
Rheuban & Gresen  
15910 Ventura Blvd.  
Suite 1610  
Encino, CA 91436

**Reference #:** 1220040470 JF  
**Billing Specialist:** Tiffany Williamson  
**Telephone:** (949) 224-4608  
**Employer ID:** 68-0542699

**RE:** Rodriguez, Omar, et al. vs. Burbank Police Department, et al.

**Representing:** Omar Rodriguez & Cindy Guillen-Gomez  
& Steve Karaglosian & Elfego Rodriguez  
& Jamal Childs

**Neutral(s):** Hon. Diane Wayne (Ret.)

**Hearing Type:** Court Reference

**Rep# 1**

Date/ Time	Description	Hours	Total Billed	Parties Billed	Your Share
03/11/2011	Hon. Diane Wayne (Ret.) Review multiple motions, oppositions and replies thereto	8.00	4,800.00	2	2,400.00
03/11/2011 9:30 am	Hon. Diane Wayne (Ret.) Additional Hearing Time	0.50	300.00	2	150.00
03/15/2011	Hon. Diane Wayne (Ret.) Review pleadings and draft Report Number 7	3.00	1,800.00	2	900.00
03/29/2011	Hon. Diane Wayne (Ret.) March 27 - 29, 2011 Review Pitchess Motion, Motion to Quash and application for medical exam; Draft Order	11.00	6,600.00	2	3,300.00
03/29/2011	Hon. Diane Wayne (Ret.) Hearing	2.00	1,200.00	2	600.00
03/31/2011	Case Management Fee				735.00
			<b>Fees</b>		<b>8,085.00</b>
03/21/2011	Hon. Diane Wayne (Ret.) APC CHARGE for conference call on 3/21/11 between Neutral and counsel.		13.73	2	6.86
			<b>Expenses/Retainers</b>		<b>6.86</b>

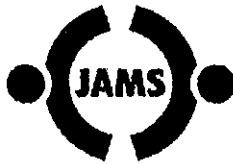
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Los Angeles, CA 90051-0850

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THE RESOLUTION EXPERTS®

RE: Rodriguez, Omar, et al. vs. Burbank Police Department, et al.

Hearing Type: Court Reference

REFERENCE #:

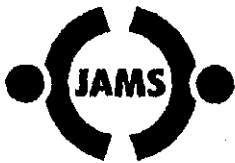
1220040470

Rep# 1

Date/ Time	Description	Hours	Total Billed	Parties Billed	Your Share
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Total \$ 8,091.88

Outstanding Balance as of 7/20/2011 \$ 14,245.22



THE RESOLUTION EXPERTS®

## INVOICE

Invoice Date  
04/29/2011

Invoice Number  
0002294486-220

To: Solomon E. Gresen, Esq.  
Rheuban & Gresen  
15910 Ventura Blvd.  
Suite 1610  
Encino, CA 91436

Reference #: 1220040470 JF  
Billing Specialist: Tiffany Williamson  
Telephone: (949) 224-4606  
Employer ID: 68-0542699

RE: Rodriguez, Omar, et al. vs. Burbank Police Department, et al.

Representing: Omar Rodriguez & Cindy Guillen-Gomez  
& Steve Karagiosian & Elfego Rodriguez  
& Jamal Childs

Neutral(s): Hon. Diane Wayne (Ret.)

Hearing Type: Court Reference

Rep# 1

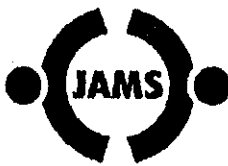
Date/ Time	Description	Hours	Total Billed	Parties Billed	Your Share
04/04/2011 10:30 am	Hon. Diane Wayne (Ret.) Hearing Time	1.00	750.00	2	375.00
04/05/2011	Hon. Diane Wayne (Ret.) Draft Order re In Camera Review	0.50	300.00	2	150.00
04/21/2011	Hon. Diane Wayne (Ret.) Conduct telephonic motion to compel depo	0.50	300.00	2	150.00
04/22/2011 9:00 am	Hon. Diane Wayne (Ret.) Hearing Time	3.00	1,800.00	2	900.00
04/28/2011 9:00 am	Hon. Diane Wayne (Ret.) Hearing Time	8.00	6,000.00	2	3,000.00
04/29/2011	Case Management Fee				457.50
Fees					5,032.50
04/21/2011	Hon. Diane Wayne (Ret.) APC CHARGE for conference call on 4/21/11 between Neutral and counsel.		8.04	2	4.02
Expenses/Retainers					4.02

Payment due upon receipt. Please make checks payable to JAMS, Inc. and mail to:  
P.O. Box 512850

Los Angeles, CA 90051-0850

Invoice total is based on the fee split agreed upon by all parties.

If the case cancels or continues, fees are due per our cancellation and continuance policy.



THE RESOLUTION EXPERTS®

RE: Rodriguez, Omar, et al. vs. Burbank Police Department, et al.

Hearing Type: Court Reference

REFERENCE #:

1220040470

Rep# 1

Date/ Time	Description	Hours	Total Billed	Parties Billed	Your Share
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Total \$ 5,036.52

Outstanding Balance as of 7/20/2011 \$ 14,245.22



THE RESOLUTION EXPERTS®

# INVOICE

Invoice Date  
05/31/2011

Invoice Number  
0002318636-220

To: Solomon E. Gresen, Esq.  
Rheuban & Gresen  
15910 Ventura Blvd.  
Suite 1610  
Encino, CA 91436

Reference #: 1220040470 JF  
Billing Specialist: Tiffany Williamson  
Telephone: (949) 224-4606  
Employer ID: 68-0542699

RE: Rodriguez, Omar, et al. vs. Burbank Police Department, et al.

Representing: Omar Rodriguez & Cindy Guillen-Gomez  
& Steve Karagiosian & Elfego Rodriguez  
& Jamal Childs

Neutral(s): Hon. Diane Wayne (Ret.)

Hearing Type: Court Reference

Rep# 1

Date/ Time	Description	Hours	Total Billed	Parties Billed	Your Share
05/11/2011	Hon. Diane Wayne (Ret.) Telephone conference	0.25	150.00	2	75.00
05/13/2011	Hon. Diane Wayne (Ret.) Review submissions, ex parte motion	0.25	150.00	2	75.00
05/31/2011	Case Management Fee				15.00
				Fees	165.00
05/11/2011	Hon. Diane Wayne (Ret.) APC CHARGE for conference call on 5/11/11 between Neutral and counsel.		6.06	2	3.03
				Expenses/Retainers	3.03
				Total	\$ 168.03
				Outstanding Balance as of 7/20/2011	\$ 14,245.22

Payment due upon receipt. Please make checks payable to JAMS, Inc. and mail to:

P.O. Box 512850

Los Angeles, CA 90051-0850

Invoice total is based on the fee split agreed upon by all parties.

If the case cancels or continues, fees are due per our cancellation and continuance policy.

# INVOICE

Invoice Date  
06/30/2011

Invoice Number  
0002345642-220

To: **Solomon E. Gresen, Esq.**  
**Rheuban & Gresen**  
**15910 Ventura Blvd.**  
**Suite 1610**  
**Encino, CA 91436**

Reference #: **1220040470 JF**  
Billing Specialist: **Tiffany Williamson**  
Telephone: **(949) 224-4606**  
Employer ID: **68-0542699**

RE: **Rodriguez, Omar, et al. vs. Burbank Police Department, et al.**

Representing: **Omar Rodriguez & Cindy Guillen-Gomez**  
**& Steve Karagioslan & Elfego Rodriguez**  
**& Jamal Childs**

Neutral(s): **Hon. Diane Wayne (Ret.)**

Hearing Type: **Court Reference**

Rep# 1

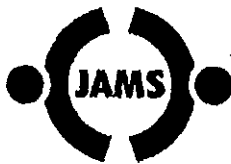
Date/ Time	Description	Hours	Total Billed	Parties Billed	Your Share
06/29/2010 10:00 am	Hon. Diane Wayne (Ret.) Hearing Time	1.00	750.00	2	375.00
06/06/2011 3:00 pm	Hon. Diane Wayne (Ret.) Hearing Time	1.00	600.00	2	300.00
06/10/2011	Hon. Diane Wayne (Ret.) Telephone conference	0.50	300.00	2	150.00
06/20/2011	Hon. Diane Wayne (Ret.) Review prior notes and submissions by counsel re Report Number 10 and in-camera review; Amend Report Number 10	1.00	600.00	2	300.00
06/30/2011	Case Management Fee				112.50
			Fees		1,237.50
06/10/2011	Hon. Diane Wayne (Ret.) APC CHARGE for conference call on 6/10/11 between Neutral and counsel.		5.88	2	2.94
06/15/2011	Hon. Diane Wayne (Ret.) APC CHARGE for conference call on 6/15/11 between Neutral and counsel.		8.56	2	4.28

Payment due upon receipt. Please make checks payable to JAMS, Inc. and mail to:  
P.O. Box 512850

Los Angeles, CA 90051-0850

Invoice total is based on the fee split agreed upon by all parties.

If the case cancels or continues, fees are due per our cancellation and continuance policy.



THE RESOLUTION EXPERTS®

RE: Rodriguez, Omar, et al. vs. Burbank Police Department, et al.

Hearing Type: Court Reference

REFERENCE #:

1220040470

Rep# 1

Date/ Time	Description	Total Billed	Parties Billed	Your Share
06/28/2011	Hon. Diane Wayne (Ret.) APC CHARGE for conference call on 6/28/11 between Neutral and counsel.	8.38	2	4.19
Expenses/Retainers				11.41
Total				\$ 1,248.91
Outstanding Balance as of 7/20/2011				\$ 14,245.22



EXHIBIT "C"

EXHIBIT "C"

---



7<sup>th</sup> Report of the Discovery Referee

**I. Procedural History**

A hearing was held on March 11, 2011 at the Los Angeles branch of JAMS, located at 707 Wilshire Blvd., 46th Floor, Los Angeles, California, 90017. The Plaintiffs Omar Rodriguez, Cindy Guilen-Gomez and Steve Karagiosian (collectively, the "Plaintiffs") were represented by LAW OFFICES OF RHEUBAN & GRESEN and Solomon E. Gresen, Esq. The Defendants Burbank Police Department and the City of Burbank (collectively, "Defendants") were represented by BALLARD, ROSEN, GOLPER & SAVITT LLP and Linda Miller Savitt, Esq.

**II. Legal History**

The Plaintiffs, three current police officers of the Burbank Police Department, filed a Complaint on May 28, 2009. The Complaint alleged that over a period of years the Plaintiffs were discriminated against, variously, based on their race, sex, pregnancy and/or ethnicity. The Complaint also alleged that the Plaintiff's were retaliated against for opposing such alleged discrimination and harassment. The Plaintiff's assert that they suffered adverse employment decisions including: imposition of discipline, demotion, failure to obtain promotions, and failure to obtain specific work assignments. The Defendants deny all allegations.

On October 2, 2009, in Department 37, the Honorable Judge Joanne B. O'Donnell, Judge of the Superior Court, appointed Diane Wayne, Judge (Ret.), as the Discovery Referee pursuant to *Civil Code of Procedure* §§ 639(a)(5), 640 and 645.1. All discovery disputes have been assigned to the Discovery Referee.

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1 **III. Recommendation:**

2 At the hearing, the following Motions were considered:

3 1. **The Defendants' Motion To Compel Further Responses To**  
4 **Special Interrogatories, Set 3: GRANT**

5 This Motion to Compel seeks further responses to two Special  
6 Interrogatories the Defendants propounded on the Plaintiffs: Special  
7 Interrogatories 10 and 11 (the "Interrogatories"). The Interrogatories relate to  
8 "RETURNED/DESTROYED DOCUMENTS"<sup>1</sup>. Specifically, Special  
9 Interrogatory 10 asks: "IDENTIFY each SOURCE from which YOU or YOUR  
10 AGENT obtained originals or copies of any RETURNED/DESTROYED  
11 DOCUMENT." Further, Special Interrogatory 11 asks: "[i]f YOU or YOUR  
12 AGENT obtained originals or copies of any RETURNED/DESTROYED  
13 DOCUMENTs directly from a physical location where those documents were  
14 stored, without the involvement of any natural person as an intermediary, describe  
15 in full and complete detail how YOU or YOUR AGENT obtained physical custody  
16 of each such document."

17 In response, the Plaintiffs asserted that the Defendants must provide them  
18 with a list of all "RETURNED/DESTROYED DOCUMENTS." The Plaintiffs  
19 claimed that this list is necessary to refresh their recollection and that they could  
20 not provide an answer to the Interrogatories with it. They also objected to the  
21 Interrogatories on the grounds of: Attorney-Client Privilege and compound  
22 questioning.

23 "Unless otherwise limited by order of the court . . . any party may obtain  
24 discovery regarding any matter, not privileged, that is relevant to the subject matter  
25 involved in the pending action or to the determination of any motion made in that  
26

27 <sup>1</sup> Documents that the Plaintiffs either destroyed or returned to Defendant City of Burbank as a  
28 result of: (1) Defendant's *Ex Parte* Application For Temporary Restraining Order And Order To  
Show Cause Re: Preliminary Injunction filed on August 6, 2009; (2) related and supplemental  
papers filed with the Court; (3) Judge Chalfant's Order dated August 27, 2009; and/or (4) Judge  
Chalfant's Order dated October 13, 2009.

1 action, if the matter either is itself admissible in evidence or appears reasonably  
2 calculated to lead to the discovery of admissible evidence." Cal. Code Civ. P. §  
3 2017.010. "For discovery purposes, information should be regarded as 'relevant to  
4 the subject matter' if it might reasonably assist a party in evaluating the case,  
5 preparing for trial, or facilitating settlement thereof." *Lipton v. Superior Court*, 48  
6 Cal. App. 4th 1599, 1611 (1996); *Gonzalez v. Superior Court*, 33 Cal. App. 4th  
7 1539, 1546 (1995). Furthermore, information that is reasonably calculated to lead  
8 to the discovery of admissible evidence does not require that it necessarily be  
9 admissible at trial; rather, the test is whether the information sought might  
10 reasonably lead to other evidence that would be admissible. *See Davies v.*  
11 *Superior Court*, 36 Cal. 3d. 291, 301 (1984); *Lipton*, 48 Cal. App. 4th at 1611-12.  
12 Importantly, "[e]ach answer in a response to interrogatories shall be as complete  
13 and straightforward as the information reasonably available to the responding party  
14 permits." Cal. Code Civ. P. § 2030.220(a).

15 In the instant case, the Interrogatories seek information "that is relevant to  
16 the subject matter" and is both "itself admissible in evidence [and] appears  
17 reasonably calculated to lead to the discovery of admissible evidence." Cal. Code  
18 Civ. P. § 2017.010. Further, the Interrogatories are not precluded by the  
19 limitations imposed by the Court or the Attorney-Client Privilege. Plaintiff argues  
20 that Judge O'Donnell's October 2, 2009 Order<sup>2</sup> limiting certain discovery applies  
21 to these Interrogatories. However, the Interrogatories only ask about the original,  
22 third-party "SOURCE[s]" from which the Plaintiffs and/or their counsel obtained  
23 any of the "RETURNED/DESTROYED DOCUMENT[s]." Thus, because the  
24 Interrogatories are not asking about communications or transmissions between  
25 attorney and client, neither Judge O'Donnell's October 2, 2009 Order nor the  
26 Attorney-Client Privilege apply.

27  
28 <sup>2</sup> "... to the extent that plaintiff provided any or all of the documents to his attorney, such  
information is entitled to the attorney-client privilege. The fact of transmission triggers the  
privilege."

1 Moreover, the Interrogatories are not compound. The Interrogatories do not  
2 ask the Plaintiffs to identify each "RETURNED/DESTROYED DOCUMENT"  
3 and then identify the "SOURCE" from which they obtained that specific  
4 "RETURNED/DESTROYED DOCUMENT." Instead, the Interrogatories ask for  
5 a general list of all "SOURCE[s]" from which the Plaintiffs and/or their counsel  
6 obtained any "RETURNED/DESTROYED DOCUMENT." Finally, the Plaintiffs  
7 do not need the Defendants to provide them with a list of  
8 "RETURNED/DESTROYED DOCUMENT[s]" in order to answer the  
9 Interrogatories. Accordingly, the Defendants' instant Motion to Compel is  
10 GRANTED. See Cal. Code Civ. P. § 2017.010; *Gonzalez*, 33 Cal. App. 4th at  
11 1546; *Davies*, 36 Cal. 3d. at 301; *Lipton*, 48 Cal. App. 4th at 1611-12.

12  
13  
14 **2. The Defendants' Motion For Protective Order Prohibiting**  
15 **Dissemination Of The Videotaped Records Of Depositions:**  
16 **DENY**

17 Detective Mike Parrinello was deposed by videotape and written  
18 transcription on June 3 and 7, 2010. On July 8, 2010, the Defendants discovered a  
19 video juxtaposing excerpts of Parinello's deposition testimony about an encounter  
20 with Plaintiff Rodriguez with excerpts of a tape recording allegedly made about the  
21 same encounter. The Defendants allege that the Plaintiffs were responsible for  
22 posting the video online and did so to intimidate witnesses. Now, seven months  
23 after discovering the video, the Defendants move for a protective order to prevent  
24 dissemination of all current and future videotaped depositions in this matter.

25 "The court, for good cause shown, may make any order that justice requires  
26 to protect any party, deponent, or other natural person or organization from  
27 unwarranted annoyance, embarrassment, or oppression, or undue burden and  
28 expense." Cal. Code Civ. P. § 2025.420(b). However, "[t]he substantive aspects  
of the law guaranteeing public access to court records are fairly well established."  
*Wilson v. Science Applications International. Corp.*, 52 Cal.App.4th 1025, 1030

1 (1997). Thus, "[t]o prevent secrecy in public affairs public policy makes public  
2 records and documents available for public inspection by newsmen and members  
3 of the general public alike." *Id.* Further, "[i]f public court business is conducted in  
4 private, it becomes impossible to expose corruption, incompetence, inefficiency,  
5 prejudice, and favoritism . . . or this reason traditional Anglo-American  
6 jurisprudence distrusts secrecy in judicial proceedings and favors a policy of  
7 maximum public access to proceedings and records of judicial tribunals." *Id.*

8 In the instant case, the Defendants have not illustrated the good cause  
9 necessary for the imposition of a protective order. First, the Motion is based on a  
10 single instance of dissemination of a videotaped deposition. Further, the Motion is  
11 made seven months after the discovery of the single instance of dissemination.  
12 Moreover, there is no evidence that the single instance of dissemination  
13 "annoy[ed], embarrass[ed], oppress[ed], or [caused an] undue burden [or]  
14 expense." Cal. Code Civ. P. § 2025.420(b). Finally, there is no evidence that  
15 witnesses have been intimidated by the single instance of dissemination.  
16 Accordingly, because the public policy favoring maximum public access to court  
17 proceedings is strong and good cause does not exist, the Defendants' instant  
18 Motion to Compel is **DENIED**. *See* Cal. Code Civ. P. § 2025.420(b); *Wilson*, 52  
19 Cal.App.4th at 1030.

20 **3. The Defendants' Motion For Sanctions: DENY**

21 "[T]he court shall impose a monetary sanction under Chapter 7  
22 (commencing with Section 2023.010) against any party, person, or attorney who  
23 unsuccessfully makes or opposes a motion to compel further response to a demand,  
24 unless it finds that the one subject to the sanction acted with substantial  
25 justification or that other circumstances make the imposition of the sanction  
26 unjust." Cal. Code Civ. P. § 2031.310(h). In awarding sanctions, "[a] court must  
27 balance the necessity of penalizing frivolous conduct against the danger of chilling  
28 the diligent pursuit of lawsuits by an attorney for his or her client . . . [n]onetheless,  
where a trial court concludes a party's motion has been brought in bad faith and is

1 frivolous, and sufficient evidence supports that conclusion, the imposition of  
2 sanctions will be upheld on appeal." *Monex International, Ltd. v. Peinado*, 224  
3 Cal.App.3d 1619, 1624-25 (1990) (citation omitted).

4  
5 In the instant case, the Defendants have attached a request for sanctions to  
6 each of the Motions that it submitted. These requests must be denied because the  
7 Plaintiffs acted with "substantial justification." Further, there is no evidence that  
8 the Plaintiffs acted frivolously or in bad faith. Thus, the imposition of sanctions  
9 would result in the "chilling [of] the diligent pursuit of [the] lawsuit[ ]." *Monex*  
10 *International, Ltd.*, 224 Cal.App.3d at 1624-25. Accordingly, the Defendants'  
11 requests for sanctions are **DENIED**. See Cal. Code Civ. P. § 2031.310(h); *Monex*  
12 *International, Ltd.*, 224 Cal.App.3d at 1624-25.

13  
14  
15 **IT IS SO RECOMMENDED.**

16  
17  
18 Date: March 16, 2011



Hon. Diane Wayne (Ret.)  
Discovery Referee

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23 //

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26 //

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28 //



**ORDER**

The foregoing Report and Recommendation #7 is adopted as an Order of the court, with the following modifications:

APR 21 2011  
Date: ~~March~~ \_\_\_\_, 2011

**JOANNE B. O'DONNELL**  
Hon. Joanne B. O'Donnell,  
Judge of the Superior Court

**PROOF OF SERVICE BY EMAIL & U.S. MAIL**

Re: Rodriguez, Omar, et al. vs. Burbank Police Department, et al.  
Reference No. 1220040470

I, Christina Dobszewicz, not a party to the within action, hereby declare that on March 17, 2011 I served the attached 7TH REPORT & RECOMMENDATION OF THE DISCOVERY REFEREE on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at Los Angeles, CALIFORNIA, addressed as follows:

Solomon Gresen Esq.  
Rheuban & Gresen  
15910 Ventura Blvd.  
Suite 1610  
Encino, CA 91436  
seg@rglawyers.com

Lawrence Michaels Esq.  
Mitchell, Silberberg & Knupp, LLP  
11377 W. Olympic Blvd.  
Los Angeles, CA 90064-1683  
LAM@MSK.com

Linda Savitt Esq.  
Ballard Rosenberg Golper & Savitt LLP  
500 North Brand Blvd.  
20th Floor  
Glendale, CA 91203-9946  
lsavitt@brgslaw.com

Steven Rheuban Esq.  
Rheuban & Gresen  
15910 Ventura Blvd.  
Suite 1610  
Encino, CA 91436  
svr@rglawyers.com

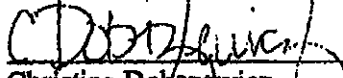
Hon. Joanne O'Donnell  
Los Angeles Superior Court  
Stanley Mosk Courthouse  
111 N. Hill St.  
Los Angeles, CA 90012  
<<<<VIA US MAIL ONLY

Ms. Carol Humiston  
Office of the City Attorney - Burbank  
275 E. Olive Avenue  
Burbank, CA 91510  
chumiston@ci.burbank.ca.us

Ms. Linda Rosoff  
Burbank City Attorney's Office  
275 E Olive Ave  
Burbank, CA 91502  
lrosoff@ci.burbank.ca.us

I declare under penalty of perjury the foregoing to be true and correct. Executed at Los Angeles,

CALIFORNIA on March 17, 2011.

  
Christina Dobszewicz  
cdobszewicz@jamsadr.com

**PROOF OF SERVICE BY U.S. MAIL**

Re: Rodriguez, Omar, et al. vs. Burbank Police Department, et al.  
Reference No. 1220040470

I, Christina Dobszewicz, not a party to the within action, hereby declare that on April 15, 2011 I served the attached 7TH REPORT & RECOMMENDATION OF THE DISCOVERY REFEREE on the parties in the within action by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, Los Angeles, CALIFORNIA, addressed as follows:

Hon. Joanne O'Donnell  
Los Angeles Superior Court  
Stanley Mosk Courthouse  
111 N. Hill St.  
Los Angeles, CA 90012

I declare under penalty of perjury the foregoing to be true and correct. Executed at Los Angeles, CALIFORNIA, on April 15, 2011.

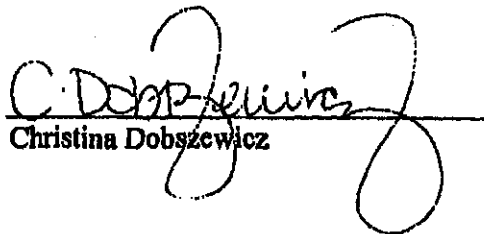
  
Christina Dobszewicz

EXHIBIT “D”

EXHIBIT “D”

# JAMS

**Plaintiffs,**

v.

**Defendants.**

\*\*\*\*\*

Assigned to: Hon. Joanne B. O'Donnell

**JAMS Reference No. 1220040470**

**Hon. Diane Wayne (Ret.),  
Discovery Referee**

### **Amended 12<sup>th</sup> Report & Recommendation of the Discovery Referee**

## Amended 12<sup>th</sup> Report of the Discovery Referee

## I. Procedural History

•

1 represented by LAW OFFICES OF RHEUBAN & GRESSEN and Solomon E.  
2 Gresen, Esq. The Defendants Burbank Police Department and the City of Burbank  
3 (collectively, "Defendants") were represented by BALLARD, ROSEN, GOLPER  
4 & SAVITT LLP and Phillip L. Reznik, Esq. and MITCHELL SILBERBERG &  
5 KNUPP LLP and Lawrence A. Michaels and Veronica T. Von Grabow.

## 6 7 **II. Legal History**

8 The Plaintiffs, three current police officers of the Burbank Police  
9 Department, filed a Complaint on May 28, 2009. The Complaint alleged that over  
10 a period of years the Plaintiffs were discriminated against, variously, based on their  
11 race, sex, pregnancy and/or ethnicity. The Complaint also alleged that the  
12 Plaintiff's were retaliated against for opposing such alleged discrimination and  
13 harassment. The Plaintiff's assert that they suffered adverse employment decisions  
14 including: imposition of discipline, demotion, failure to obtain promotions, and  
15 failure to obtain specific work assignments. The Defendants deny all allegations.

16 On October 2, 2009, in Department 37, the Honorable Judge Joanne B.  
17 O'Donnell, Judge of the Superior Court, appointed Diane Wayne, Judge (Ret.), as  
18 the Discovery Referee pursuant to *Civil Code of Procedure* §§ 639(a)(5), 640 and  
19 645.1. All discovery disputes have been assigned to the Discovery Referee. The  
20 Referee now amends Report #12 at Page 4, lines 24-26, and at Page 6, line 13.

## 21 **III. Recommendation:**

22 At the hearing, the following Motions were considered:

- 23 1. **The Defendants' Motion To Compel Further Responses by O.**  
24 **Rodriguez, Karagiosian and Guillen-Gomez to Special**  
25 **Interrogatories Set Three and for Monetary and Terminating**  
26 **Sanctions.**

27 This Motion to Compel seeks further responses to two Special  
28 Interrogatories the Defendants propounded on the Plaintiffs: Special  
Interrogatories 10 and 11 (the "Interrogatories"). The Interrogatories relate to

1 "RETURNED/DESTROYED DOCUMENTS<sup>1</sup>." Specifically, Special  
2 Interrogatory 10 asks: "IDENTIFY each SOURCE from which YOU or YOUR  
3 AGENT obtained originals or copies of any RETURNED/DESTROYED  
4 DOCUMENT." Further, Special Interrogatory 11 asks: "[i]f YOU or YOUR  
5 AGENT obtained originals or copies of any RETURNED/DESTROYED  
6 DOCUMENTs directly from a physical location where those documents were  
7 stored, without the involvement of any natural person as an intermediary, describe  
8 in full and complete detail how YOU or YOUR AGENT obtained physical custody  
9 of each such document."

10 In response, the Plaintiffs asserted that the Defendants must provide them  
11 with a list of all "RETURNED/DESTROYED DOCUMENTS." The Plaintiffs  
12 claimed that this list is necessary to refresh their recollection and that they could  
13 not provide an answer to the Interrogatories with it. They also objected to the  
14 Interrogatories on the grounds of: Attorney-Client Privilege and compound  
15 questioning. The purpose of this motion was to seek information on how the  
16 Plaintiffs received those documents. This Referee recommended that further  
17 answers were required and the Court adopted the ruling on April 21, 2011.

18 "Unless otherwise limited by order of the court . . . any party may obtain  
19 discovery regarding any matter, not privileged, that is relevant to the subject matter  
20 involved in the pending action or to the determination of any motion made in that  
21 action, if the matter either is itself admissible in evidence or appears reasonably  
22 calculated to lead to the discovery of admissible evidence." *Cal. Code Civ. P. §*  
23 *2017.010*. "For discovery purposes, information should be regarded as 'relevant to  
24 the subject matter' if it might reasonably assist a party in evaluating the case,  
25 preparing for trial, or facilitating settlement thereof." *Lipton v. Superior Court*, 48

---

27 <sup>1</sup> Documents that the Plaintiffs either destroyed or returned to Defendant City of Burbank as a  
28 result of: (1) Defendant's *Ex Parte* Application For Temporary Restraining Order And Order To  
Show Cause Re: Preliminary Injunction filed on August 6, 2009; (2) related and supplemental  
papers filed with the Court; (3) Judge Chalfant's Order dated August 27, 2009; and/or (4) Judge  
Chalfant's Order dated October 13, 2009.

1 Cal. App. 4th 1599, 1611 (1996); *Gonzalez v. Superior Court*, 33 Cal. App. 4th  
2 1539, 1546 (1995). Furthermore, information that is reasonably calculated to lead  
3 to the discovery of admissible evidence does not require that it necessarily be  
4 admissible at trial; rather, the test is whether the information sought might  
5 reasonably lead to other evidence that would be admissible. *See Davies v.*  
6 *Superior Court*, 36 Cal. 3d. 291, 301 (1984); *Lipton*, 48 Cal. App. 4th at 1611-12.  
7 Importantly, “[e]ach answer in a response to interrogatories shall be as complete  
8 and straightforward as the information reasonably available to the responding party  
9 permits.” *Cal. Code Civ. P. § 2030.220(a)*.

10 In the instant case, the Interrogatories seek information “that is relevant to  
11 the subject matter” and is both “itself admissible in evidence [and] appears  
12 reasonably calculated to lead to the discovery of admissible evidence.” *Cal. Code*  
13 *Civ. P. § 2017.010*. Further, the Interrogatories are not precluded by the  
14 limitations imposed by the Court or the Attorney-Client Privilege. Plaintiff argues  
15 that Judge O’Donnell’s October 2, 2009 Order<sup>2</sup> limiting certain discovery applies  
16 to these Interrogatories. However, the Interrogatories only ask about the original,  
17 third-party “SOURCE[s]” from which the Plaintiffs and/or their counsel obtained  
18 any of the “RETURNED/DESTROYED DOCUMENT[s].”

19 Despite the Order of this Court the further answers are inadequate and not  
20 verified. In fact, Plaintiffs Guillen and Karagiosian have not provided any  
21 answers. The purported responses by Rodriguez only provide that he received the  
22 information while employed by the Burbank Police Department not “how” he  
23 received them. Additionally, Rodriguez has provided inconsistent answers in his  
24 deposition. Defendants are entitled to the information. Accordingly, Plaintiffs  
25 Rodriguez, Guillen and Karagiosian shall provide complete and verified responses  
26 to the Interrogatories within 5 days.

27  
28 <sup>2</sup> “... to the extent that plaintiff provided any or all of the documents to his attorney, such  
information is entitled to the attorney-client privilege. The fact of transmission triggers the  
privilege.”



1 Defendants are awarded sanctions in the amount of \$1535.00.  
2 Terminating sanctions striking Plaintiff Rodriguez Answer to the Cross Complaint  
3 are denied.

4 "[T]he court shall impose a monetary sanction under Chapter 7  
5 (commencing with Section 2023.010) against any party, person, or attorney who  
6 unsuccessfully makes or opposes a motion to compel further response to a demand,  
7 unless it finds that the one subject to the sanction acted with substantial  
8 justification or that other circumstances make the imposition of the sanction  
9 unjust." *Cal. Code Civ. P.* § 2031.310(h). In awarding sanctions, "[a] court must  
10 balance the necessity of penalizing frivolous conduct against the danger of chilling  
11 the diligent pursuit of lawsuits by an attorney for his or her client . . . *Monex*  
12 *International, Ltd. v. Peinado*, 224 Cal.App.3d 1619, 1624-25 (1990) (citation  
13 omitted).

14 This request must be granted because the Plaintiffs acted without  
15 "substantial justification". Additionally, the California Code of Civil Procedure  
16 provides that courts may impose sanctions against a party who engages in conduct  
17 that is a misuse of the discovery process. Disobeying a court order is such an  
18 abuse. *CCP* §§ 2023.010(f),(g), 2-23.030.

19  
20  
21  
22 **2. The Defendants' Opposition for a Protective Order and Request**  
23 **for Sanctions. Grant.**

24 Plaintiffs counsel filed an untimely Motion for Protective Order for the  
25 taking of a non-party deposition, Tina Gunn, based on his unavailability. The  
26 deposition had been scheduled for six weeks prior to the opposition. The Motion  
27 was filed the day the deposition was to be heard, April 19, 2011 and scheduled for  
28 hearing on May 10, 2011. The filing of the Motion of course mooted the  
deposition hearing. Nevertheless, the Defendants offered to reschedule if Plaintiffs

1 agreed to reschedule the deposition of one of their witnesses who be out of town  
2 for the trial (which had been recently rescheduled). Plaintiffs refused.


3 The motion was subsequently dismissed before it could be heard and  
4 Defendants seek sanctions for having to oppose a frivolous motion pursuant to  
5 *Civil Code* Section 2023.010.  
6

7 The filing of the Motion was clearly a pretext for unilaterally effecting a  
8 last-minute cancellation of the deposition in a misuse of the discovery process. It  
9 is way too late in this proceeding to engage in this kind of activity.  
10

11 Defendants seek monetary sanctions as a result of the time expended in  
12 pursuing this motion. Defendants are awarded sanctions in the amount of  
13 \$1,500.00.

14 **IT IS SO RECOMMENDED.**  
15  
16

17 Date: July 11, 2011

  
18 Hon. Diane Wayne (Ret.)  
19 Discovery Referee  
20

21 All matters set forth in the above Amended Report #12 of Referee having been  
22 considered; the Court hereby approves and adopts said Report as the decision of  
23 the court, including the findings and recommendations therein.  
24

25  
26  
27 Date: July \_\_\_\_, 2011

28  
\_\_\_\_\_  
Hon. Joanne B. O'Donnell,  
Judge of the Superior Court

**PROOF OF SERVICE BY EMAIL & U.S. MAIL**

Re: Rodriguez, Omar, et al. vs. Burbank Police Department, et al.  
Reference No. 1220040470

I, Lulu Santos, not a party to the within action, hereby declare that on July 12, 2011 I served the attached AMENDED 12TH REPORT & RECOMMENDATION OF THE DISCOVERY REFEREE on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at Los Angeles, CALIFORNIA, addressed as follows:

Solomon Gresen Esq.  
Rheuban & Gresen  
15910 Ventura Blvd.  
Suite 1610

Encino, CA 91436  
Phone: 818-815-2727

seg@rglawyers.com

Parties Represented:

Jamal Childs

Elfego Rodriguez

Steve Karagiosian

Cindy Guillen-Gomez

Omar Rodriguez

Lawrence Michaels Esq.  
Mitchell, Silberberg & Knupp, LLP  
11377 W. Olympic Blvd.

Los Angeles, CA 90064-1683

Phone: 310-312-2000

LAM@MSK.com

Parties Represented:

City of Burbank

Linda Savitt Esq.  
Ballard Rosenberg Golper & Savitt LLP  
500 North Brand Blvd.  
20th Floor

Glendale, CA 91203-9946

Phone: 818-508-3700

lsavitt@brgslaw.com

Parties Represented:

City of Burbank

Steven Rheuban Esq.  
Rheuban & Gresen  
15910 Ventura Blvd.  
Suite 1610

Encino, CA 91436

Phone: 818-815-2727

svr@rglawyers.com

Parties Represented:

Jamal Childs

Elfego Rodriguez

Steve Karagiosian

Cindy Guillen-Gomez

Omar Rodriguez

Ms. Carol Humiston  
Office of the City Attorney - Burbank  
275 E. Olive Avenue  
Burbank, CA 91510  
Phone: 818-238-5707  
chumiston@ci.burbank.ca.us  
Parties Represented:  
City of Burbank

Ms. Linda Rosoff  
Burbank City Attorney's Office  
275 E Olive Ave  
Burbank, CA 91502  
Phone: 818-238-5702  
lrosoff@ci.burbank.ca.us  
Parties Represented:  
City of Burbank

Hon. Joanne B. O'Donnell  
Stanley Mosk Courthouse  
111 N. Hill Street  
Los Angeles, CA 90012  
(BY MAIL ONLY)

I declare under penalty of perjury the foregoing to be true and correct. Executed at Los Angeles,

CALIFORNIA on July 12, 2011.



Lulu Santos

lsantos@jamsadr.com

Lawrence A. Michaels  
Mitchell, Silberberg & Knupp, LLP  
11377 W. Olympic Blvd.  
Los Angeles, CA 90064-1683  
United States

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Mitchell Silberberg & Knupp LLP, 11377 West Olympic Boulevard, Los Angeles, California 90064-1683.

On August 25, 2011, I served a copy of the foregoing document(s) described as **DEFENDANT CITY OF BURBANK'S STATEMENT OF POSITION RE ORDER TO SHOW CAUSE RE TERMINATING SANCTIONS AGAINST PLAINTIFFS OMAR RODRIGUEZ, STEVE KARAGIOSIAN AND CINDY GUILLEN-GOMEZ FOR FAILURE TO PAY DISCOVERY REFEREE FEES; DECLARATION OF VERONICA VON GRABOW** on the interested parties in this action at their last known address as set forth below by taking the action described below:

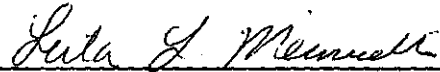
Solomon E. Gresen, Esq., [seg@rglawyers.com](mailto:seg@rglawyers.com)  
Steven V. Rheuban, Esq., [svr@rglawyers.com](mailto:svr@rglawyers.com)  
Law Offices of Rheuban & Gresen  
15910 Ventura Boulevard, Suite 1610  
Encino, CA 91436  
T: (818) 815-2727  
F: (818) 815-2737  
*Attorneys for Plaintiffs Cindy Guillen-Gomez,  
Steve Karagiosian, Elfego Rodriguez, and Jamal  
Childs*

Kenneth C. Yuwiler,  
[kyuwiler@shslaborlaw.com](mailto:kyuwiler@shslaborlaw.com)  
Silver Hadden Silver Wexler & Levine  
1428 Second Street  
Santa Monica, California 90401  
T: (310) 393-1486  
F: (310) 395-5801  
*Attorneys for Plaintiff and Cross-Defendant  
Omar Rodriguez*

- ☐ **BY MAIL:** I placed the above-mentioned document(s) in sealed envelope(s) addressed as set forth above, and deposited each envelope in the mail at Los Angeles, California. Each envelope was mailed with postage thereon fully prepaid.
- ☐ **BY OVERNIGHT MAIL:** I placed the above-mentioned document(s) in sealed envelope(s) designated by the carrier, with delivery fees provided for, and addressed as set forth above, and deposited the above-described document(s) with in the ordinary course of business, by depositing the document(s) in a facility regularly maintained by the carrier or delivering the document(s) to an authorized driver for the carrier.
- ☒ **BY PERSONAL DELIVERY:** I placed the above-mentioned document(s) in sealed envelope(s), and caused personal delivery by First Legal of the document(s) listed above to the person(s) at the address(es) set forth above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 25, 2011, at Los Angeles, California.

  
Leila L. Meimandi

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the county of Los Angeles, State of California.

4 I am over the age of 18, and not a party to the within action; my business address is First  
5 Legal, 1517 West Beverly Boulevard Los Angeles California 90026

6 On August 25, 2011, I served the foregoing document(s) described as **DEFENDANT**  
7 **CITY OF BURBANK'S STATEMENT OF POSITION RE ORDER TO SHOW CAUSE RE**  
8 **TERMINATING SANCTIONS AGAINST PLAINTIFFS OMAR RODRIGUEZ, STEVE**  
9 **KARAGIOSIAN AND CINDY GUILLEN-GOMEZ FOR FAILURE TO PAY**  
10 **DISCOVERY REFEREE FEES; DECLARATION OF VERONICA VON GRABOW** high  
11 was enclosed in sealed envelopes addressed as follows, and taking the action described below:

12 Kenneth C. Yuwiler,  
13 kyuwiler@shslaborlaw.com  
14 Silver Hadden Silver Wexler & Levine  
15 1428 Second Street  
16 Santa Monica, California 90401  
17 T: (310) 393-1486  
18 F: (310) 395-5801  
19 *Attorneys for Plaintiff and Cross-Defendant*  
20 *Omar Rodriguez*

21 ☒ **BY PERSONAL SERVICE:** I hand delivered such envelope(s):

22 ☐ to the addressee(s);

23 ☒ to the receptionist/clerk/secretary in the office(s) of the addressee(s).

24 ☐ by leaving the envelope in a conspicuous place at the office of the addressee(s)  
25 between the hours of 9:00 a.m. and 5:00 p.m.

26 I declare under penalty of perjury under the laws of the State of California that the above is  
27 true and correct.

28 Executed on August 25, 2011, at Los Angeles, California

Robert Williams

Printed Name



Signature

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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10 **DISCOVERY REFEREE FEES; DECLARATION OF VERONICA VON GRABOW** which  
11 was enclosed in sealed envelopes addressed as follows, and taking the action described below:

12 Solomon E. Gresen, Esq., [seg@rglawyers.com](mailto:seg@rglawyers.com)  
13 Steven V. Rheuban, Esq., [svr@rglawyers.com](mailto:svr@rglawyers.com)  
14 Law Offices of Rheuban & Gresen  
15 15910 Ventura Boulevard, Suite 1610  
16 Encino, CA 91436  
17 T: (818) 815-2727  
18 F: (818) 815-2737  
19 *Attorneys for Plaintiffs Cindy Guillen-Gomez,*  
20 *Steve Karagiosian, Elfego Rodriguez, and Jamal*  
21 *Childs*

22 ☒ **BY PERSONAL SERVICE:** I hand delivered such envelope(s):

23 ☐ to the addressee(s);

24 ☒ to the receptionist/clerk/secretary in the office(s) of the addressee(s).

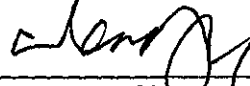
25 ☐ by leaving the envelope in a conspicuous place at the office of the addressee(s)  
26 between the hours of 9:00 a.m. and 5:00 p.m.

27 I declare under penalty of perjury under the laws of the State of California that the above is  
28 true and correct.

Executed on August 25, 2011, at Los Angeles, California.

29 David Y H

Printed Name



Signature

8/25/11